

1  
2  
3  
4  
5  
6  
7  
8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
10

11 JODI LYNN JOHNSON,

12 Plaintiff,

13 v.

14 COMMISSIONER OF SOCIAL  
15 SECURITY,

16 Defendant.

No. 2:22-CV-1649-DMC

MEMORANDUM OPINION AND ORDER

17  
18 Plaintiff, who is proceeding with retained counsel, brings this action for judicial  
19 review of a final decision of the Commissioner of Social Security under 42 U.S.C. § 405(g).  
20 Pursuant to the written consent of all parties, ECF Nos. 8 and 13, this case is before the  
21 undersigned as the presiding judge for all purposes, including entry of final judgment. See 28  
22 U.S.C. § 636(c); see also ECF No. 15 (minute order reassigning case to Magistrate Judge).  
23 Pending before the Court are the parties' briefs on the merits, ECF Nos. 9 and 11.

24 The Court reviews the Commissioner's final decision to determine whether it is:  
25 (1) based on proper legal standards; and (2) supported by substantial evidence in the record as a  
26 whole. See Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). "Substantial evidence" is  
27 more than a mere scintilla, but less than a preponderance. See Saelee v. Chater, 94 F.3d 520, 521  
28 (9th Cir. 1996). It is "... such evidence as a reasonable mind might accept as adequate to support

a conclusion.” Richardson v. Perales, 402 U.S. 389, 402 (1971). The record as a whole, including both the evidence that supports and detracts from the Commissioner’s conclusion, must be considered and weighed. See Howard v. Heckler, 782 F.2d 1484, 1487 (9th Cir. 1986); Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985). The Court may not affirm the Commissioner’s decision simply by isolating a specific quantum of supporting evidence. See Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989). If substantial evidence supports the administrative findings, or if there is conflicting evidence supporting a particular finding, the finding of the Commissioner is conclusive. See Sprague v. Bowen, 812 F.2d 1226, 1229-30 (9th Cir. 1987). Therefore, where the evidence is susceptible to more than one rational interpretation, one of which supports the Commissioner’s decision, the decision must be affirmed, see Thomas v. Barnhart, 278 F.3d 947, 954 (9th Cir. 2002), and may be set aside only if an improper legal standard was applied in weighing the evidence, see Burkhart v. Bowen, 856 F.2d 1335, 1338 (9th Cir. 1988).

For the reasons discussed below, the matter will be remanded for further proceedings.

## I. THE DISABILITY EVALUATION PROCESS

To achieve uniformity of decisions, the Commissioner employs a five-step sequential evaluation process to determine whether a claimant is disabled. See 20 C.F.R. §§ 404.1520 (a)-(f) and 416.920(a)-(f). The sequential evaluation proceeds as follows:

- |        |   |
|--------|---|
| Step 1 | Determination whether the claimant is engaged in substantial gainful activity; if so, the claimant is presumed not disabled and the claim is denied;  |
| Step 2 | If the claimant is not engaged in substantial gainful activity, determination whether the claimant has a severe impairment; if not, the claimant is presumed not disabled and the claim is denied;  |
| Step 3 | If the claimant has one or more severe impairments, determination whether any such severe impairment meets or medically equals an impairment listed in the regulations; if the claimant has such an impairment, the claimant is presumed disabled and the claim is granted; |

Step 4 If the claimant's impairment is not listed in the regulations, determination whether the impairment prevents the claimant from performing past work in light of the claimant's residual functional capacity; if not, the claimant is presumed not disabled and the claim is denied;

Step 5 If the impairment prevents the claimant from performing past work, determination whether, in light of the claimant's residual functional capacity, the claimant can engage in other types of substantial gainful work that exist in the national economy; if so, the claimant is not disabled and the claim is denied.

See 20 C.F.R. §§ 404.1520 (a)-(f) and 416.920(a)-(f).

To qualify for benefits, the claimant must establish the inability to engage in substantial gainful activity due to a medically determinable physical or mental impairment which has lasted, or can be expected to last, a continuous period of not less than 12 months. See 42 U.S.C. § 1382c(a)(3)(A). The claimant must provide evidence of a physical or mental impairment of such severity the claimant is unable to engage in previous work and cannot, considering the claimant's age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy. See Quang Van Han v. Bower, 882 F.2d 1453, 1456 (9th Cir. 1989). The claimant has the initial burden of proving the existence of a disability. See Terry v. Sullivan, 903 F.2d 1273, 1275 (9th Cir. 1990).

The claimant establishes a prima facie case by showing that a physical or mental impairment prevents the claimant from engaging in previous work. See Gallant v. Heckler, 753 F.2d 1450, 1452 (9th Cir. 1984); 20 C.F.R. §§ 404.1520(f) and 416.920(f). If the claimant establishes a prima facie case, the burden then shifts to the Commissioner to show the claimant can perform other work existing in the national economy. See Burkhart v. Bowen, 856 F.2d 1335, 1340 (9th Cir. 1988); Hoffman v. Heckler, 785 F.2d 1423, 1425 (9th Cir. 1986); Hammock v. Bowen, 867 F.2d 1209, 1212-1213 (9th Cir. 1989).

///

///

///

///

## II. THE COMMISSIONER'S FINDINGS

Plaintiff applied for social security benefits on October 4, 2019. See CAR 15.<sup>1</sup> Plaintiff claims disability began on October 4, 2019. See id. Plaintiff's claim was initially denied. Following denial of reconsideration, Plaintiff requested an administrative hearing, which was held on May 21, 2021, before Administrative Law Judge (ALJ) Brian M. Steger. In a June 30, 2021, decision, the ALJ concluded Plaintiff is not disabled based on the following relevant findings:

1. The claimant has the following severe impairments: obesity, cervical spondylosis, right shoulder osteoarthritis, and bilateral hand tremors;
2. The claimant does not have an impairment or combination of impairments that meets or medically equals an impairment listed in the regulations;
3. The claimant has the residual functional capacity to perform light exertional work as defined in 20 CFR 416.967(b) with the following limitations: she is incapable of climbing ladders, ropes, and scaffolds and is incapable of crawling; she is capable of occasionally climbing ramps and stairs and occasionally balancing, stooping, kneeling, and crouching; she is incapable of reaching above shoulder level with the non-dominant right upper extremity but is otherwise capable of frequently reaching with the non-dominant right upper extremity; she is capable of frequently handling, fingering, feeling, and grasping with the bilateral hands; and she is able to perform work that does not require driving as a part of work duties or require more than occasional work-related exposure to hazards, such as unprotected heights and unguarded moving machinery;
4. Considering the claimant's age, education, work experience, residual functional capacity, and vocational expert testimony, the claimant is capable of performing her past relevant work as a cleaner, housekeeper, and home attendant.

See CAR 18-28.

After the Appeals Council declined review on July 25, 2022, this appeal followed.

///

///

///

---

<sup>1</sup> Citations are to the Certified Administrative Record (CAR) lodged on December 21, 2022, ECF No. 6.

### III. DISCUSSION

In her opening brief, Plaintiff argues: (1) the ALJ failed to properly evaluate Plaintiff's subjective statements and testimony or provide specific, clear, and convincing reasons for discounting Plaintiff's allegations; and (2) the ALJ failed to evaluate the third-party statement from Plaintiff's spouse.

#### A. Evaluation of Plaintiff's Statements and Testimony

The Commissioner determines the weight to be given to a claimant's own statements and testimony, and the court defers to the Commissioner's discretion if the Commissioner used the proper process and provided proper reasons. See Saelee v. Chater, 94 F.3d 520, 522 (9th Cir. 1996). An explicit finding must be supported by specific, cogent reasons. See Rashad v. Sullivan, 903 F.2d 1229, 1231 (9th Cir. 1990). General findings are insufficient. See Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1995). Rather, the Commissioner must identify what testimony is not afforded weight and what evidence undermines the testimony. See id. Moreover, unless there is affirmative evidence in the record of malingering, the Commissioner's reasons for rejecting testimony as not credible must be "clear and convincing." See id.; see also Carmickle v. Commissioner, 533 F.3d 1155, 1160 (9th Cir. 2008) (citing Lingenfelter v Astrue, 504 F.3d 1028, 1936 (9th Cir. 2007), and Gregor v. Barnhart, 464 F.3d 968, 972 (9th Cir. 2006)).

If there is objective medical evidence of an underlying impairment, the Commissioner may not discredit a claimant's testimony as to the severity of symptoms merely because they are unsupported by objective medical evidence. See Bunnell v. Sullivan, 947 F.2d 341, 347-48 (9th Cir. 1991) (en banc). As the Ninth Circuit explained in Smolen v. Chater:

The claimant need not produce objective medical evidence of the [symptom] itself, or the severity thereof. Nor must the claimant produce objective medical evidence of the causal relationship between the medically determinable impairment and the symptom. By requiring that the medical impairment "could reasonably be expected to produce" pain or another symptom, the Cotton test requires only that the causal relationship be a reasonable inference, not a medically proven phenomenon.

80 F.3d 1273, 1282 (9th Cir. 1996) (referring to the test established in Cotton v. Bowen, 799 F.2d 1403 (9th Cir. 1986)).

///

1           The Commissioner may, however, consider the nature of the symptoms alleged,  
2 including aggravating factors, medication, treatment, and functional restrictions. See Bunnell,  
3 947 F.2d at 345-47. In weighing a claimant's statements and testimony, the Commissioner may  
4 also consider: (1) the claimant's reputation for truthfulness, prior inconsistent statements, or other  
5 inconsistent testimony; (2) unexplained or inadequately explained failure to seek treatment or to  
6 follow a prescribed course of treatment; (3) the claimant's daily activities; (4) work records; and  
7 (5) physician and third-party testimony about the nature, severity, and effect of symptoms. See  
8 Smolen, 80 F.3d at 1284 (citations omitted). It is also appropriate to consider whether the  
9 claimant cooperated during physical examinations or provided conflicting statements concerning  
10 drug and/or alcohol use. See Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002). If the  
11 claimant testifies as to symptoms greater than would normally be produced by a given  
12 impairment, the ALJ may disbelieve that testimony provided specific findings are made. See  
13 Carmickle, 533 F.3d at 1161 (citing Swenson v. Sullivan, 876 F.2d 683, 687 (9th Cir. 1989)).

14           At Step 4, the ALJ evaluated Plaintiff's subjective statements and testimony in  
15 determining Plaintiff's residual functional capacity. See CAR 24-26. ALJ summarized  
16 Plaintiff's statements and testimony as follows:

17           In a disability report dated January 28, 2020, the claimant alleged she was  
18 disabled due to limitations caused by a brain injury, insomnia, back pain,  
and tremors. (Exhibit C3E).

19           In subsequent disability reports, the claimant reported a worsening of her  
20 conditions. More specifically, the claimant reported a worsening of her  
21 tremors and shoulder pain. She further reported foot pain and claimed  
difficulty holding or grasping objects. (Exhibits C7E; C12).

22           With regard to functional limitations, the claimant reported difficulty  
23 lifting, walking, seeing, remembering things, and using her hands. (Exhibit  
24 C6E). Vicky Young, the claimant's wife, wrote that the claimant had  
difficulty lifting, walking, seeing, remembering things, completing tasks,  
and using her hands. (Exhibit C5E).

25           In an opening statement, the claimant's representative argued the claimant  
26 was disabled due to bilateral hand tremors, cervical spine pain, right  
shoulder pain, and left foot pain. (Hearing Testimony).

27       ///

28       ///

When questioned at the hearing as to what precluded her from working, the claimant testified she was unable to work due to an inability to perform motor skills with her hands due to the tremors. (Hearing Testimony).

CAR 24-25.

The ALJ determined that Plaintiff's statements and testimony were "not entirely consistent with the medical evidence and other evidence in the record. . . ." CAR 25. In doing so, the ALJ stated:

As a part of this evaluation, I evaluated the consistency of the claimant's subjective allegations with the evidence of record. In making this assessment, I considered the record as a whole, including the claimant's statements regarding the intensity, persistence, and limiting effects of her alleged symptoms. Factors relevant to this assessment include:

- (i) Daily activities;
- (ii) The location, duration, frequency, and intensity of the pain or other symptoms;
- (iii) Precipitating and aggravating factors;
- (iv) The type, dosage, effectiveness, and side effects of any medication taken to alleviate pain or other symptoms;
- (v) Treatment, other than medication, received for relief of pain or other symptoms;
- (vi) Any measures, other than treatment, used to relieve the pain or other symptoms; and
- (vii) Any other factors concerning the claimant's functional limitations and restrictions due to pain or other symptoms.

Symptoms, including pain, will be found to diminish the claimant's capacity for basic work activities to the extent the alleged functional limitations and restrictions due to symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence (20 CFR 416.929(c)(3) and SSR 16-3p). A residual functional capacity for the reduced range of work set forth above takes into account the location, duration, frequency, and intensity of the claimant's alleged symptoms, as well as the precipitating and aggravating factors.

In terms of objective medical evidence, the medical record supports the claimant's assertion her impairments limit her ability to work. The medical evidence does not support the claimant's contention her impairments prevent her from working at all.

CAR 25.

The ALJ then provided a lengthy discussion of the objective medical evidence, which the Court does not reproduce here. See CAR 25-26.

///

1           The Court agrees with Plaintiff that the ALJ’s analysis of her subjective statements  
2 and testimony failed to comport with applicable legal standards. The Ninth Circuit has held that  
3 the ALJ does not provide sufficient reasoning by “simply reciting the medical evidence in support  
4 of his or her residual functional capacity determination.” Brown-Hunter v. Colvin, 8-6 F.3d 487,  
5 488 (9th Cir. 2015); see also LaPointe v. Berryhill, 2017 WL 2484168, at \*5 (D. Mont. 2017)  
6 (“[a]lthough the ALJ discussed [the claimant’s] medical record at length he did not explain how  
7 any of [the] medical evidence was inconsistent with Mr. LaPointe’s statements”). Here, the ALJ  
8 has outlined Plaintiff’s statements and testimony and has summarized the objective medical  
9 evidence. The ALJ has not, however, bridged the gap between the two to explain how the  
10 medical evidence cited undermines specific portions of Plaintiff’s statements and testimony. On  
11 this record, this Court can only guess as to the bases for the ALJ’s decision not to credit  
12 Plaintiff’s statements and testimony. The matter will be remanded to allow the Commissioner to  
13 re-evaluate Plaintiff’s subjective statements and testimony.

14           **B. Evaluation of Lay Witness Evidence**

15           In determining whether a claimant is disabled, an ALJ generally must consider lay  
16 witness testimony concerning a claimant's ability to work. See Dodrill v. Shalala, 12 F.3d 915,  
17 919 (9th Cir. 1993); 20 C.F.R. §§ 404.1513(d)(4) & (e), 416.913(d)(4) & (e). Indeed, “lay  
18 testimony as to a claimant's symptoms or how an impairment affects ability to work is competent  
19 evidence . . . and therefore cannot be disregarded without comment.” See Nguyen v. Chater, 100  
20 F.3d 1462, 1467 (9th Cir. 1996). Consequently, “[i]f the ALJ wishes to discount the testimony of  
21 lay witnesses, he must give reasons that are germane to each witness.” Dodrill, 12 F.3d at 919.  
22 When rejecting third party statements which are similar in nature to the statements of plaintiff, the  
23 ALJ may cite the same reasons used by the ALJ in rejecting the plaintiff’s statement. See  
24 Valentine v. Commissioner Soc. Sec. Admin., 574 F.3d 685, 694 (9th Cir. 2009) (approving  
25 rejection of a third-party family member’s testimony, which was similar to the claimant’s, for the  
26 same reasons given for rejection of the claimant’s complaints).

27       ///

28       ///



1           The ALJ, however, need not discuss all evidence presented. See Vincent on  
2 Behalf of Vincent v. Heckler, 739 F.2d 1393, 1394-95 (9th Cir. 1984). Rather, he must explain  
3 why “significant probative evidence has been rejected.” Id. (citing Cotter v. Harris, 642 F.2d 700,  
4 706 (3d Cir.1981). Applying this standard, the court held that the ALJ properly ignored evidence  
5 which was neither significant nor probative. See id. at 1395. As to a letter from a treating  
6 psychiatrist, the court reasoned that, because the ALJ must explain why he rejected  
7 uncontroverted medical evidence, the ALJ did not err in ignoring the doctor’s letter which was  
8 controverted by other medical evidence considered in the decision. See id. As to lay witness  
9 testimony concerning the plaintiff’s mental functioning as a result of a second stroke, the court  
10 concluded that the evidence was properly ignored because it “conflicted with the available  
11 medical evidence” assessing the plaintiff’s mental capacity. Id.

12           In Stout v. Commissioner, the Ninth Circuit considered an ALJ’s silent disregard  
13 of lay witness testimony. See 454 F.3d 1050, 1053-54 (9th Cir. 2006). The lay witnesses had  
14 testified about the plaintiff’s “inability to deal with the demands of work” due to alleged back  
15 pain and mental impairments. Id. The witnesses, who were former co-workers testified about  
16 the plaintiff’s frustration with simple tasks and uncommon need for supervision. See id. Noting  
17 that the lay witness testimony in question was “consistent with medical evidence,” the court in  
18 Stout concluded that the “ALJ was required to consider and comment upon the uncontradicted lay  
19 testimony, as it concerned how Stout’s impairments impact his ability to work.” Id. at 1053.  
20 The Commissioner conceded that the ALJ’s silent disregard of the lay testimony contravened  
21 Ninth Circuit case law and the controlling regulations, and the Ninth Circuit rejected the  
22 Commissioner’s request that the error be disregarded as harmless. See id. at 1054-55. The court  
23 concluded:

24           Because the ALJ failed to provide any reasons for rejecting competent lay  
25 testimony, and because we conclude that error was not harmless,  
substantial evidence does not support the Commissioner’s decision . . .

26           Id. at 1056-67.

27       ///

28       ///

From this case law, the Court concludes that the rule for lay witness testimony depends on whether the testimony in question is controverted or consistent with the medical evidence. If it is controverted, then the ALJ does not err by ignoring it. See Vincent, 739 F.2d at 1395. If lay witness testimony is consistent with the medical evidence, then the ALJ must consider and comment upon it. See Stout, 454 F.3d at 1053. However, the Commissioner's regulations require the ALJ consider lay witness testimony in certain types of cases. See Smolen v. Chater, 80 F.3d 1273, 1288 (9th Cir. 1996); SSR 88-13. That ruling requires the ALJ to consider third-party lay witness evidence where the plaintiff alleges pain or other symptoms that are not shown by the medical evidence. See id. Thus, in cases where the plaintiff alleges impairments, such as chronic fatigue or pain (which by their very nature do not always produce clinical medical evidence), it is impossible for the court to conclude that lay witness evidence concerning the plaintiff's abilities is necessarily controverted such that it may be properly ignored. Therefore, in these types of cases, the ALJ is required by the regulations and case law to consider lay witness evidence.

In this case, the hearing decision does not contain a discussion of any lay witness evidence except the following:

In accordance with 20 CFR 404.1520b(c) and 416.920b(c), I did not provide an examination of evidence that is inherently neither valuable nor persuasive such as issues reserved to the Commissioner, decisions by other governmental agencies and non-governmental entities, and disability examiner findings. For example, The Third Party Function Report completed by Vicky Young is neither valuable nor persuasive. (Exhibit C5E).

CAR 28.

Plaintiff argues:

. . . [SSR] 16-3p further provides that an ALJ "may draw inferences and conclusions about an individual's statements that would be helpful to us in assessing the intensity, persistence, and limiting effects of symptoms" including statements from "non-medical sources such as family and friends." *See* 16-3p. Yet, the ALJ failed to consider the third-party function report offered by Plaintiff's wife which reported that Plaintiff is in constant pain, cannot write, requires a closed container for drinks, drops food, and has difficulty eating and drinking due to her hand tremors. T 291-298. The ALJ failed to articulate any consideration of this report and simply stated that "I did not provide an examination of evidence that is inherently neither valuable nor persuasive..." and

1 continued “[f]or example, The Third Party Function Report completed by  
2 Vicky Young is neither valuable nor persuasive.” T 28.

3 ECF No. 9, pg. 16.

4 Defendant offers no argument concerning the ALJ’s lack of analysis of lay witness evidence in  
5 this case. See generally ECF No. 11.

6 Vicky Young’s third-party function report, dated February 28, 2020, is contained  
7 in the record at Exhibit C5E. See CAR 291-98. Mrs. Young stated that she is Plaintiff’s wife,  
8 has known Plaintiff since 2007, and that Plaintiff lives with her at their home. See id. at 291.  
9 Mrs. Young stated that Plaintiff’s impairments prevent her from writing and cause her to spend a  
10 lot of time resting. See id. Mrs. Young stated that Plaintiff is in constant pain in her foot, neck,  
11 shoulders, hands, and teeth, and that the has no fine motor skills. See id. Mrs. Young stated that  
12 she helps Plaintiff “a lot” and takes care of her. Id.

13 As to Plaintiff’s typical day, Mrs. Young stated that Plaintiff wakes up, drinks  
14 coffee, feeds the cats, then lays back down and spends most of the day in bed. See id. at 292.  
15 Mrs. Young stated that she assists Plaintiff with caring for the cats. See id. Mrs. Young further  
16 stated that Plaintiff wakes up often during the night groaning in pain, which interferes with  
17 Plaintiff’s sleep. See id. Mrs. Young also stated that Plaintiff needs help with dressing, but that  
18 Plaintiff can bathe herself and care for her hair on her own. See id. As to eating meals, Mrs.  
19 Young stated that Plaintiff needs assistance because she cannot hold a fork and that Plaintiff spills  
20 often. See id. She also stated that Plaintiff cannot write on her own. See id. Mrs. Young also  
21 stated that Plaintiff requires assistance and reminders with medication. See id. at 293. According  
22 to Mrs. Young, Plaintiff cannot cook meals because she drops things and becomes frustrated. See  
23 id. Mrs. Young stated that Plaintiff is able to infrequently vacuum and do dishes, though Plaintiff  
24 requires assistance when she performs these tasks. See id. Mrs. Young stated that Plaintiff goes  
25 out daily and, when she does so, she walks or drives a car or rides in a car. See id. at 294. Mrs.  
26 Young also stated that Plaintiff can go out alone. See id. Mrs. Young further stated that Plaintiff  
27 can go shopping in stores for food, but usually only for small shopping trips of less than 30  
28 minutes. See id. Mrs. Young further stated that Plaintiff is able to count change, but cannot pay

1 bills, handle bank accounts, or use checks. See id. Mrs. Young stated that she now does these  
2 tasks. See id. at 295.

3           Regarding Plaintiff's ability to engage in work-related tasks, Mrs. Young stated  
4 that Plaintiff has difficulty lifting, walking, seeing, remembering, completing tasks, and using her  
5 hands. See id. at 296. Mrs. Young adds that Plaintiff's foot hurts badly after two hours and that  
6 Plaintiff cannot lift anything heavy. See id. Mrs. Young also stated that Plaintiff has a difficult  
7 time following written instructions but has an "adequate" ability to follow spoken instructions.  
8 Id. Mrs. Young described Plaintiff's ability to get along with authority figures as "adequate." Id.  
9 According to Mrs. Young, Plaintiff's ability to handle stress is "about average" and that Plaintiff  
10 "does ok" with changes in routine. Id.

11           The Court finds Plaintiff's argument regarding the ALJ's failure to address Mrs.  
12 Young's third-party statement to be persuasive. As stated above, the ruling in Smolen v. Chater  
13 requires the ALJ to consider third-party lay witness evidence where the plaintiff alleges pain or  
14 other symptoms that are not shown by the medical evidence. Such is the case here given  
15 Plaintiff's allegations of constant pain, which is corroborated by Mrs. Young's report. The ALJ  
16 did not provide an explanation for why he failed to consider the third-party report beyond stating  
17 that it is neither valuable nor persuasive, an assertion with which this Court does not agree. The  
18 matter will be remanded to allow the Commissioner to consider Mrs. Young's statements.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

**IV. CONCLUSION**

For the foregoing reasons, this matter will be remanded under sentence four of 42 U.S.C. § 405(g) for further development of the record and/or further findings addressing the deficiencies noted above.

Accordingly, IT IS HEREBY ORDERED as follows:

1. Plaintiff's motion for summary judgment, ECF No. 9, is GRANTED.
2. Defendant's motion for summary judgment, ECF No. 11, is DENIED.
3. The Commissioner's final decision is REVERSED and this matter is REMANDED for further proceedings consistent with this order.
4. The Clerk of the Court is directed to enter judgment and close this file.

Dated: February 26, 2024



DENNIS M. COTA  
UNITED STATES MAGISTRATE JUDGE